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| EVERETT FARLOW, | : | Order Docketing and Dismissing |
| Appellant | : | Appeal |
| | : | |
| v. | : | |
| | : | Docket No. IBIA 96-105-A |
| BILLINGS AREA DIRECTOR, | : | |
| BUREAU OF INDIAN AFFAIRS, | : | |
| Appellee | : | August 28, 1996 |

This is an appeal from a June 11, 1996, decision of the Billings Area Director, Bureau of Indian Affairs, concerning payment of a claim under the Old Age Assistance Claims Settlement Act, 25 U.S.C. §§ 2301-2307 (1994). A copy of appellant's July 6, 1996, notice of appeal, together with the administrative record, was transmitted to the Board by the Area Director and was received by the Board on July 22, 1996.

The record transmitted by the Area Director showed that appellant received the Area Director's decision on June 14, 1996. It also showed that the Area Director's June 11, 1996, decision correctly informed appellant that he was to file his notice of appeal with the Board and provided the Board's correct address. However, even though the copy of appellant's notice of appeal sent by the Area Director showed that it was addressed to the Board, the Board had not, as of July 23, 1996, received the original of the notice.

Therefore, on July 23, 1996, the Board ordered appellant to show that he had filed a timely notice of appeal. The Board stated that, in order to make such a showing, appellant must show that he mailed a notice of appeal to the Board on or before July 15, 1996.

On August 26, 1996, the Board received certain documents, apparently from appellant. These documents were enclosed in an envelope bearing appellant's return address, although not his name. There was nothing in the envelope which explained the purpose of sending the documents to the Board. Nor was there anything actually signed by appellant. However, given the timing of the mailing and the return address on the envelope, the Board believes it likely that the documents were sent by appellant and that he intended them to be his response to the Board's July 23, 1996, order. The documents are: a copy of the Area Director's June 11, 1996, decision; a copy of the Board's July 23, 1996, order; and a partial copy (i.e., the first page only) of Adrainne Llaneza's July 2, 1996, notice of appeal from a June 11, 1996, decision issued by the Area Director in a case similar to this one. 1/ The copy of Llaneza's notice of appeal bears handwritten

1/ Llaneza's appeal has been dismissed as untimely. 29 IBIA 296.

notations. However, neither these notations, nor the text of any of the documents submitted by appellant, has any bearing on the question of whether he filed a timely notice of appeal with the Board. Appellant does not even allege that he mailed his notice of appeal to the Board, let alone show that he did so.

The Board finds that appellant has failed to file a timely notice of appeal. The Area Director's decision provided correct appeal instructions. Appellant did not follow those instructions but, instead, apparently filed his notice of appeal with the Area Director. The Board has consistently held that a notice of appeal is not timely when the appellant has been given the correct appeal information but files his/her notice of appeal with an official other than the Board, resulting in receipt of the notice of appeal by the Board outside the time period specified in the regulations. E.g., Simon v. Sacramento Area Director, 29 IBIA 59 (1996); After Buffalo v. Acting Billings Area Director, 28 IBIA 131, recon. denied, 28 IBIA 159 (1995).

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal is docketed but is dismissed as not being timely filed. Accordingly, the Area Director's June 11, 1996, decision is final for the Department of the Interior.

Anita Vogt
Administrative Judge

Kathryn A. Lynn
Chief Administrative Judge